

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
CASE NO. 1:10-cv-00564-MRB

LEXMARK INTERNATIONAL, INC.
Plaintiff

v.

INK TECHNOLOGIES PRINTER SUPPLIES, LLC
et al
Defendants

***STIPULATED PERMANENT INJUNCTION, CONSENT JUDGMENT, AND
DISMISSAL WITH PREJUDICE***

This matter is before the Court on the stipulated motion of Plaintiff, Lexmark International, Inc. (“Lexmark”) and Defendant Virtual Imaging Products, Inc., ***135 Ormont Drive, Unit #14/15, North York, Ontario, M9L 1N6*** (“VIP”) for entry of a Stipulated Permanent Injunction, Consent Judgment and Dismissal With Prejudice, as the Parties have agreed to a compromise and settlement of this action.

**IT IS HEREBY FOUND, ORDERED, ADJUDGED WITH CONSENT OF
THE PARTIES that:**

1. ***VIP, its parent, divisions, subsidiaries affiliates, successors and assigns and its directors, officers, and employees, or any of them*** are, or have been, in the business, among other things, of selling remanufactured and compatible ***toner cartridges in the United States and in foreign countries for use in Lexmark laser printers, including*** E120; E220; E230/232/234/238/240; E320/322; E321/323; and/or E250/350/352/450 laser printers (the “Accused Cartridges”);

2. Lexmark owns and has standing to sue for infringement of United States Patent Nos. ***5,337,032; 5,634,169; 5,758,231; 5,758,233; 5,768,661; 5,802,432; 5,875,378; 5,995,772; 6,009,291; 6,078,771; 6,397,015; 6,459,876;***

6,487,383; 6,496,662; 6,678,489; 6,816,692; 6,871,031; 6,879,792; 7,139,510; 7,233,760; and 7,305,204 (the “Lexmark Patents”);

3. The Lexmark Patents are valid and enforceable against VIP in the United States.

4. Lexmark manufactures and sells toner cartridges for its printer lines, which include T420; T520/522; T610/612/614/616; T620/622; T630/632/634; T640/642/644; E120; E220; E230/232/234/238/240; E320/322; E321/323; and E250/350/352/450 laser printers (“Lexmark Toner Cartridges”).

5. The following table identifies the patent claims of the Lexmark Patents that are satisfied literally by the Lexmark Toner Cartridges:

Lexmark Toner Cartridges						
Patent	E120	E23X/E24X/ E33X/E34X	E25X/ E35X/E45X	T52X/T61X/ T62X/T63X/T64X	E320/22	E220 and E321/23
5,337,032				1,5,6		
5,634,169				1-3,32-34, 36, 42	32,36,42	32,36,42
5,758,231		1-16	1-16		1-16	1-16
5,758,233				1-4		
5,768,661				1,2,3,6		
5,802,432				1-3, 7-9		
5,875,378				1-3,12-14,24		
5,995,772				1-3,5,7-9, 12,14-18,20,21	14,15,22 , 32-34	14,15,22, 32-34
6,009,291	1-2	1-2	1-2	1-2		
6,078,771	1,5,6,10 , 12,13,1 5	1,5,6,10, 12,13,15	1,5,6,10, 12,13,15	1,2,5,6,10, 12,13,15		
6,397,015				1-4,7-12, 14-19,22-24 1-28	1,2,4, 9,17,19	1,2,4, 9,17,19
6,459,876						
6,487,383	1,2,6, 10,15,1 9	1,2,6, 10,15,19	1,2,6, 10,15,19	1,2,6,10, 11,15,19	19	19
6,496,662		1,3,5,7	1,3,5,7			
6,678,489		5-6	5-6			
6,816,692	1-13	1-13	1-13			
6,871,031		1-6,8-12	1-6,8-12			
6,879,792		1-11	1-11			
7,139,510		1-10	1-10			
7,233,760	11,12,1 4	11,12,14	11,12,14			
7,305,204		1-20	1-8,10-13			

6. The use, remanufacture, offer to sell or sale in the United States by anyone other than Lexmark or a licensee of Lexmark of any remanufactured Lexmark Toner Cartridges that were originally sold outside the United States constitutes an infringement of some or all of the above-identified claims in the Lexmark Patents, except to the extent that Lexmark has exhausted its rights in such patents.

7. Lexmark alleges that VIP's importation into and sale in the United States of compatible and/or remanufactured or refilled E120; E220/E321/E323; E230/232/234/238/240 and E250/350/352/450 toner cartridges first sold outside of the United States infringe at least the claims of the patents set forth in the table below, except to the extent that Lexmark has exhausted its rights in such patents:

Patents-in-Suit	VIP Toner Cartridges			
	<i>E120</i>	<i>E23x/E24x/ E33x/E34x</i>	<i>E25x/E35x/E45x</i>	<i>E220 and E321/E323 32, 36, 42</i>
<i>5,634,169</i>				<i>32, 36, 42</i>
<i>5,758,231</i>		<i>1-16</i>	<i>1-16</i>	<i>1-16</i>
<i>5,995,772</i>				<i>14, 15, 22, 32</i>
<i>6,078,771</i>	<i>1, 5, 6, 10, 12, 13, 15</i>			
<i>6,397,015</i>				<i>1, 2, 4, 9, 17, 19</i>
<i>6,496,662</i>		<i>1, 3, 5, 7</i>	<i>1, 3, 5, 7 5, 6 1</i>	
<i>6,678,489</i>		<i>5, 6</i>		
<i>6,816,692</i>	<i>1-3, 5, 7, 8, 10, 13</i>	<i>1</i>		
<i>6,871,031</i>		<i>1-6, 8-12</i>	<i>1-6, 8-12 1-11</i>	
<i>6,879,792</i>		<i>1-11</i>		
<i>7,139,510</i>		<i>1-10</i>	<i>1-10</i>	
<i>7,233,760</i>	<i>11, 12, 14</i>			
<i>7,305,204</i>		<i>1-8, 10-13</i>	<i>1-8, 10-13</i>	

8. *VIP is entering into this Stipulated Permanent Injunction, Consent Judgment and Dismissal With Prejudice solely for the purpose of resolving the present litigation; and nothing herein shall be construed as an admission by VIP that it infringed or otherwise violated any of Lexmark's rights in the Lexmark Patents or as a decision by this Court that VIP has infringed or otherwise violated any of Lexmark's rights in the Lexmark Patents.*

9. This Court permanently enjoins VIP and those persons or companies in active concert or participation with VIP who receive actual notice of the order by personal service or otherwise from making, using, selling, offering for sale in or

importing into the United States Accused Cartridges that infringe any of the above-identified patent claims.

10. Nothing herein limits or shall be construed to limit in any way VIP's activities with respect to toner cartridges in which Lexmark's patent *rights* have been exhausted. ***Further, nothing herein limits or shall be construed to limit in any way VIP's activities with respect to any Lexmark Patents that have expired, lapsed, are no longer enforceable, or have found to be invalid by a court of competent jurisdiction. Finally, nothing herein limits or*** shall be construed to limit in any way VIP's activities outside the United States.

11. Contingent upon this Court's entry of this Order, VIP consents to personal jurisdiction by this Court, consents to venue in this District, and waives services of process for this action.

12. This Court retains jurisdiction over Lexmark and VIP to the extent necessary to enforce the terms of this Stipulated Permanent Injunction, Consent Judgment, and Dismissal With Prejudice.

13. This Stipulated Permanent Injunction, Consent Judgment, and Dismissal With Prejudice shall be binding upon and shall inure to the benefit of Lexmark and VIP as well as each of their respective subsidiaries, corporate parents, affiliates, and/or successors and assigns.

14. All claims between Lexmark and VIP are hereby dismissed with prejudice, with each party to bear its own costs and attorneys' fees.

IT IS SO ORDERED

s/Michael R. Barrett
The Honorable Michael R. Barrett
United States District Court Judge

HAVE SEEN AND AGREED TO ON NOVEMBER 30, 2010;
TO BE ENTERED:

By: /s/Steven B. Loy

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